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SUBJECT: KOSOVO'S IPR REGIME STILL WEAK BUT FUTURE PROGRESS
POSSIBLE

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Classified By: Chief of Mission Tina Kaidanow for reasons 1.4 (B) and (D).

SENSITIVE BUT UNCLASSIFIED - PLEASE PROTECT ACCORDINGLY

11. (SBU) Summary. Kosovo's intellectual property rights (IPR) regime remains a bad mix of little institutional IPR experience, a struggling economy and high unemployment, limited interest from UNMIK and the Provisional Institutions of Self-Government (PISG) in implementing laws, and weak enforcement and judiciary infrastructures that lack capacity and expertise to effectively combat the problem. USOP has taken the lead to improve IPR by providing technical assistance, pushing UNMIK and the PISG to pass and promulgate needed legislation, offering U.S. Patent and Trademark Office (USPTO) training to experts and Kosovo Police Service (KPS) officers who specialize in financial crimes, and persuading the private sector also to provide training and technical assistance. Our efforts are having some success, but political will from UNMIK, PISG and private industry to take important steps to improve Kosovo's IPR regime is crucial for success in the short and long run. End Summary.

DEVELOPING KOSOVO'S IPR INFRASTRUCTURE IMPROVING BUT STILL A WORK IN PROGRESS

12. (SBU) In our last cable on Kosovo's intellectual property rights regime (reftel), we reported a situation that needed significant improvement. While there has been some progress in improving Kosovo's IPR regime in a year, much more work needs to be done. The Ministry of Trade and Industry, as well as private sector organizations such as the American Chamber of Commerce in Kosovo and the Kosovo Chamber of Commerce, believe that there are more stores, outlets and street vendors selling illegally produced or pirated clothing, digital and analog goods, books, video games, movies, digital video diskettes (DVDs) and many other products in comparison to last year. In addition, more Kosovar companies are illegally using trademarks of internationally-known companies for their advertisements, products and stores now compared to last year.

13. (SBU) USAID has provided technical assistance to help Kosovo draft legislation on trademarks, copyright and

industrial design. USOP was successful in lobbying the PISG to amend the patent law in order to establish the Patent and Trademark Office under the Ministry of Trade and Industry (MTI). Kosovo has undertaken a comprehensive effort to develop new IPR laws, but certain statutes, such as the industrial property law, are old Yugoslav laws that are still on the books. Isa Dukaj, Head of the MTI's Department of Industry, said the PISG lacks the capacity and experience to implement the laws and deal with IPR issues. He noted that having the appropriate IPR legislation is a very important first step, but implementing the laws is the challenge for the PISG.

ECONOMIC AND UNEMPLOYMENT WOES EXACERBATE IPR VIOLATIONS

14. (SBU) Kosovo's struggling economy and high unemployment rate contribute to gross IPR violations. The lack of productivity of the Kosovo economy and unemployment, estimated at 44 percent, compel many Kosovars to do whatever is necessary to make money. MTI officials believe that many Kosovars are involved in the trading aspects of selling illegally produced goods, noting that the number of street vendors and stores selling these pirated products openly and unabashedly throughout Kosovo has increased. Some American, foreign and local companies said that when the street vendors and stores are confronted with information that many of the products they sell are illegal and violate another firm's IPR, the Kosovars profess innocence of any wrongdoing and argue that they are only trying to make money to feed their families.

UNMIK AND PISG SHOW LIMITED INTEREST IN PROTECTING IPR...

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15. (C) UNMIK officials agree with IPR protection, but they deny responsibility for dealing with this issue, asserting that it is a responsibility of the Kosovo government. The PISG appears to understand the importance of IPR protection as it aspires to attract greater foreign and local investment in Kosovo. However, this comprehension often does not produce tangible results. While one aspect of this problem is that the MTI and Kosovo Police Service lack the technical expertise to combat these crimes, several foreign and local companies believe that the biggest obstacle to IPR protection is that some Assembly members do not want to draft or enact legislation that would hurt the business interests of their associates or supporters involved in these activities.

...WHICH WEAKENS KOSOVO'S ENFORCEMENT INFRASTRUCTURE

16. (SBU) Private industry representatives say that stringent, sustainable IPR enforcement along with the threat of stiff fines and penalties such as jail time are two sorely needed mechanisms for protecting IPR and combating illegally-produced products and pirated goods in Kosovo. They emphasize that IPR enforcement measures, fines and penalties must be contained in the law to be effective. American, foreign and local companies have complained that Kosovo's IPR enforcement regime is especially weak given the limited interest from UNMIK and the PISG to take serious action to protect intellectual property, as well as the lack of laws which would provide the legal mechanisms to do so. In addition, most judges and public prosecutors who specialize in commercial law do not have the technical expertise to adjudicate or prosecute IPR cases. Dukaj noted that in 2006 there were no prosecutions for IPR violations.

AMERICAN COMPANIES NEGATIVELY AFFECTED BY WEAK IPR INFRASTRUCTURE

17. (SBU) Trademark and copyright infringement are the biggest concerns for U.S. companies and local firms which distribute American products. Coca-Cola, Microsoft, ConocoPhillips and Red Bull are some of the American companies that have complained about trademark and copyright infringement. Post

is actively working with UNMIK Office of Legal Affairs, UNMIK Civilian Police, the Criminal Investigation Division, the Public Prosecutor's Office and special economic and investigative units in the KPS to address their concerns. Foreign firms have also complained to their liaison offices about trademark infringement, copyright issues and industrial design protection.

USOP TAKING LEAD TO IMPROVE KOSOVO'S IPR REGIME

¶8. (SBU) In addition to providing training, technical assistance and applying pressure to improve IPR legislation, USOP has actively taken the lead to improve enforcement by sending two patent and trademark experts, and three Kosovo Police Service (KPS) officers who specialize in financial crimes, to USPTO training on three different occasions in ¶2006. We have also encouraged the private sector to give training and technical assistance to the PISG and KPS to resolve crimes and commercial disputes. USOP has persuaded the American Chamber of Commerce in Kosovo, Kosovo Chamber of Commerce, and individual companies like Coca-Cola and Microsoft of the importance of providing training and technical assistance to improve Kosovo's IPR infrastructure to protect their interests. In 2006, the American Chamber of Commerce in Kosovo held two seminars with UNMIK and PISG officials on ways to improve IPR protection. The Kosovo Chamber of Commerce plans to hold a seminar later this year to raise IPR awareness among its members and PISG officials. Coca-Cola has met with UNMIK Civilian Police and KPS officials to explore areas of cooperation to improve investigative techniques and enforcement mechanisms. Microsoft is working with the PISG to sign licensing agreements with all of the ministries and agencies to prevent copyright infringement.

COMMENT: POLITICAL WILL CRUCIAL TO IMPROVE IPR PROTECTION

¶9. (C) The political will from UNMIK and PISG to take serious

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steps in drafting and passing legislation, as well as establishing the appropriate judicial and law enforcement frameworks to implement measures with stiff fines and penalties, are crucial to improving Kosovo's IPR regime over the short and long run. Private industry also needs to continue to provide the necessary resources, technical assistance and training to help improve IPR protection. Business organizations like the American Chamber of Commerce in Kosovo and the Kosovo Chamber of Commerce are beginning to understand that IPR protection is a systemic problem throughout Kosovo that will take time to resolve. Private industry has been actively engaging UNMIK and PISG to recognize that IPR protection is an essential ingredient to stimulating economic growth and foreign investment.
KAIDANOW